IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Bail Appl..No. 4762 of 2007()

CRIME NO.337/2007 OF SULTHAN BATHERY POLICE STATION

PETITIONERS : ACCUSED:

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1. UDAYA KUMAR, S/O.THANKAPPAN,
   MOOLAMPUZHA HOUSE, KOLICHAL,
   MONNANAD P.O., NILAGIRIS.

2. R.MOHANDAS, S/O,RAMAN,
   AYYANKOLLY, NILAGIRIS.

3. VIJAYAKUMAR, S/O.RAGHAVAN,
   THOVARIMUNDA HOUSE, AMBALAMOOLA P.O., NILAGIRIS.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT / STATE:

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1. THE SUB INSPECTOR OF POLICE,
   SULTHAN BATHERY POLICE STATION.

2. STATE REPRESENTED BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4762 of 2007

Dated this the 23rd day of August, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations under Section 376 I.P.C. The crux of the allegations is that the defacto complainant a widow aged about 34 years having two children, a former employee of one of the accused had allegedly gone to that accused to collect arrears of wages due to her. She was asked to go to that accused. That accused asked her to accompany him in a car. She did. The other accused also got into the car. In the car on the public road, the victim was allegedly raped. The alleged incident took place on 23.07.07. The F.I statement is seen lodged only on 27.07.07. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The allegation is inherently improbable. The petitioners and the defacto complainant even on her own showing was before the Devala Police on the next date, no crime is seen registered there. According to the counsel for the petitioners, the petitioners had filed a complaint before the said police complaining about misappropriation committed by the alleged victim. The victim

was also available before that police. No complaint whatsoever was made about the alleged incident which had taken place earlier. In these circumstances, the learned counsel for the petitioners submits that the allegations are totally false and are invented for the purpose of vexing and harassing the petitioners.

3. The learned Public Prosecutor vehemently opposes the application. The learned Public Prosecutor submits that the short delay in filing the F.I statement may not be reckoned as crucial or vital. Basically it may not be lost sight of that a 34 year old widow, a former employee is making allegations about the alleged rape. It was not necessary for her to make a belated complaint if as a matter of fact the intention was to vex and harass the petitioners. In fact a complaint before the Devala police was a calculated counter blast to the present allegations which the victim raised. She had suffered no injuries also. But that is not of any crucial significance, submits the learned Public Prosecutor. The learned Public Prosecutor further relies on the fact that the victim had promptly complained to another old woman in whose house she had taken shelter about the incident which had taken place. Considering the totality of the circumstances, there is absolutely nothing at the moment not to accept and act upon the versions of the victim, it is submitted by the learned Public Prosecutor .

4. I have considered all the relevant inputs. The case diary has been perused by me already. Having considered all the relevant inputs, I am persuaded to agree that appropriate directions under Section 438 Cr.P.C can be issued in favour of the petitioners. Such conditions shall be imposed which shall ensure that the interests of a fair, efficient and expeditious investigation are protected.

5. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate at 11 a.m on 30.08.2007. They shall be enlarged on regular bail on their executing a bond for Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 4 p.m on 31.08.2007 and 01.09.2007. During this period, it shall be open to the Investigating Officer to interrogate the petitioners in custody and also to get the examination of the petitioners. Thereafter the petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 12 noon on all Mondays and Fridays for a period of 3 months and thereafter as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

iv) If the petitioners were arrested prior to their surrender on 30.08.07 as directed in clause (1) above, they shall be released from custody on their executing a bond for Rs.1,00,000/- (Rupees One Lakh only) without any sureties undertaking to appear before the learned Magistrate on 30.08.07.

(R.BASANT, JUDGE)

rtr/-